

Appl. No. : **09/350,043**
Filed : **July 8, 1999**

REMARKS

Applicant thanks the Examiner for the courteous interview conducted on June 15, 2004, and the helpful comments provided therein.

Presently, original claims 10-11, 14-16, 27-28, 33-34, previously presented claims 23-26, 35-37, amended claims 1-9, 12-13, 19, 21, 30-32, 38-41, 50-53, and new claims 54-102 are before the Examiner. Claims 17-18, 20, 29, and 42-49 have been canceled without prejudice to, or disclaimer of, the subject matter contained therein. Applicant maintains that the cancellation of a claim makes no admission as to its patentability and reserves the right to pursue the subject matter of the cancelled claim in this or any other patent application.

As suggested by the Examiner, Applicant has amended the claims to insert the descriptor "ethoxylated" in front of castor, jojoba, corn, or emu oil where it did not already appear. Support for this amendment can be found throughout the specification, for example, on page 19, lines 1-2 of the original specification (page 20, lines 6-7 of the substitute specification submitted herewith). Applicant has also replaced the word "lipid" throughout the claims with the word "oil". Support for this amendment can be found throughout the specification, for example, on page 2, lines 28-29 of the original specification (page 3, lines 1-2 of the substitute specification submitted herewith). As suggested by the Examiner, Applicant has also substituted the phrase "delivery agent" with the phrase "delivered agent" throughout the claims. This clarification is also supported by the specification. Finally, pending claims have been amended and new claims added, which specify that the delivered agent can be of various ranges of molecular weight. Support for these amendments and new claims can be found on page 8, line 20, through page 9, line 2 of the original specification (page 9, lines 2-17 of the substitute specification submitted herewith). Applicant addresses the Examiner's specific rejections below.

Specification

The Examiner has objected to hyperlinks in the specification. In the substitute specification submitted herewith, the Applicant has amended the specification to remove the hyperlinks. Applicant has amended the Specification to replace the phrase "delivery agent(s)" with the phrase "delivered agent(s)", as suggested by the Examiner. Accordingly, no new matter has been introduced by these amendments.

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Rejection under 35 U.S.C. § 112, first paragraph – written description

Claim 19 is rejected under 35 U.S.C. § 112, first paragraph, as failing to meet the written description requirement. The Examiner states that there is no support for the range of delivery agent having a molecular weight of “more than” 2,000 daltons, and that the use of the phrase “delivery agent” is repugnant to the normal use of the term in the art as well as the delivery agents discussed in the specification. Examiner suggests that the term “delivered agent” is more accurate and Applicant has amended the specification accordingly.

To expedite allowance of the instant application, the Applicant has amended Claims 19 and 32 by deleting the objected reference to “more than 2,000 daltons”, in favor of “less than or equal to 2,000,000 daltons.” This amendment was discussed at the interview and was found to be acceptable. Therefore Applicant respectfully requests that the Examiner withdraw the rejection under 35 U.S.C. § 112, first paragraph, as failing to meet the written description requirement.

Rejection under 35 U.S.C. § 112, second paragraph – indefiniteness

Claims 1-16, 19, 21-28, and 30-52 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Examiner objects to the recited language “ethoxylated lipid selected from the group consisting of castor oil, jojoba oil, corn oil and emu oil”, stating that it is more accurate to state that the group consists of “ethoxylated castor oil, ethoxylated jojoba oil, ethoxylated corn oil and ethoxylated emu oil”. Examiner also objects to Claim 13, stating that the limitation is indefinite since oleoresin capsicum is encompassed by the term capsaicin.

To expedite allowance of the instant application, Applicant has amended the claims as suggested by the Examiner, replacing the objected language “ethoxylated lipid selected from the group consisting of castor oil, jojoba oil, corn oil and emu oil” with the language “ethoxylated oil selected from the group consisting of ethoxylated castor oil, ethoxylated jojoba oil, ethoxylated corn oil and ethoxylated emu oil”. Applicant has also deleted the reference to oleoresin capsicum in Claim 13. Therefore Applicant respectfully requests that the rejections of Claims 1-16, 19, 21-28, and 30-52 under 35 U.S.C. § 112, second paragraph, be withdrawn.

CONCLUSION

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In view of the above amendments and comments, Applicant believes that the instant application is in condition for allowance. However, if the Examiner has any questions, the Examiner is respectfully requested to call Applicant's attorney, Eric S. Furman at (619) 687-8643.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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